

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ERIC LAMONT LIPSEY,

Defendant-Appellant.

UNPUBLISHED
February 14, 1997

No. 192124
Kent Circuit Court
LC No. 94003152

Before: Bandstra, P.J., and Hoekstra and J.M. Batzer,* JJ.

MEMORANDUM.

Defendant pleaded guilty to possession with intent to deliver less than fifty grams of cocaine, MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv), and was sentenced to four to twenty years' imprisonment. Defendant now appeals his sentence as of right, and we affirm.

On appeal, defendant argues that his four- to twenty-year sentence violates the principle of proportionality set forth in *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990). Because defendant's minimum sentence is within the recommended guidelines range of 1 to 5 years, it is presumptively proportionate. *People v Broden*, 428 Mich 343, 354-355; 408 NW2d 789 (1987). Defendant has failed to present any unusual circumstances to overcome the presumption of proportionality. Defendant's alleged minimal culpability in the possession of the drugs at issue is not an unusual circumstance which would overcome that presumption, *People v Daniel*, 207 Mich App 47, 54; 523 NW2d 830 (1994). Therefore, defendant's sentence is proportionate.

Furthermore, we note that defendant's plea agreement included a recommendation by the prosecution that defendant be sentenced to four to twenty years' imprisonment, exactly the sentence he received. Because defendant has made an effort to withdraw his plea for a sound legal reason, defendant's arguments in this regard are waived. *People v Blount* 197 Mich App 174; 494 NW2d 829 (1992).

* Circuit judge, sitting on the Court of Appeals by assignment.

Affirmed.

/s/ Richard A. Bandstra

/s/ Joel P. Hoekstra

/s/ James M. Batzer